

INTRODUCTION

CHAPTER 1

BACKGROUND

In the aftermath of the Rodney King incident, the American political climate shifted towards demanding that each city employ a proactive approach in regard to police misconduct. A common belief voiced by the public, which still exists today, was that no matter how thorough, impartial and objective police departments handled citizen complaints, they could not be trusted to exclusively police themselves. Citizens in effect, demanded that their city leaders establish some form of external review process for their police departments.

Five years ago, the city leaders of San José conducted a nation wide search in which several models of police oversight were evaluated. Many variations of such programs were found as a result of this search. In examining those programs, it was concluded that police oversight

programs could basically be divided into two groups, those that have civilians conduct the investigations, and those that have the police investigate complaints. The model of police oversight established in San José on September 13, 1993 incorporated various components from existing programs found in different cities throughout the country.

FUNCTIONS OF THE OFFICE

The Office of the Independent Police Auditor (hereafter referred to as the "IPA") has three primary functions: (1) it serves as an alternate forum where people may file a complaint; (2) it reviews the investigations of complaints conducted by the San José Police Department (hereafter referred to as the "SJPD"); and (3) it promotes public awareness of a person's right to file a complaint. The IPA does

MISSION

The Independent Police Auditor's mission is to provide an independent review of the citizen complaint process, to promote public awareness, and increase greater police accountability to the public by the San José Police Department.

not conduct the investigations but rather objectively reviews the investigations conducted by the San José Police Department's Professional Standards & Conduct Unit (hereafter referred to as "PSCU") for thoroughness, fairness, and to insure that the findings are supported by the evidence. This review may include requesting added investigation, and continues until the investigation is completed to the satisfaction of the IPA. The IPA operates under the police department's umbrella of confidentiality and therefore, is entitled to total disclosure of all police information concerning citizen complaints.

CHARACTERISTICS OF THE IPA

The IPA, like all other civilian police oversight entities, does not have the case specific authority to over turn the Chief of Police's finding. However, if and when all

investigative steps are exhausted, the IPA still disagrees with the finding of an investigation, the IPA will meet with the Chief and the City Manager to discuss the specifics of the case. The IPA also reports to the Mayor and City Council, the frequency and/or patterns resulting from cases in which the IPA disagreed with the findings reached by the Chief of Police.

The IPA does not hold public hearings. One of the advantages of holding public hearings is that the complainant has an opportunity to take part in the process. However, a further review of the pros and cons of public hearings also reveals some disadvantages. First, unlike the officers, complainants are not represented by counsel. Second, police officers have access to the police reports concerning the incident that gave rise to the complaint, which they can review and use to

*The term **citizen complaint** is used in this report to describe a complaint that can be initiated against a member of the San José Police Department. It is not reflective of a person's U.S. Citizenship status.*

help them prepare for the hearing. The complainants do not have access to the police officer's reports. Third, unlike police officers, complainants usually do not have experience testifying in a public forum. Lastly, public hearings can create an environment that will alienate and/or polarize the officers and the public.

In San José, interviews of witnesses and subject officers are conducted by PSCU Investigators. The PSCU is located separate from the San José Police Department in a business like environment. The investigators are required to notify the IPA of the interviews in order to give the IPA an opportunity to attend the interview and provide questions. Every officer is compelled to attend these interviews and to answer all questions or be subjected to discipline including termination for insubordination.

An important function of the IPA is to serve as a central data collection for citizen complaint information and then to analyze the data for patterns and trends. For example, a particular officer was found to have a high number of complaints alleging that he/she was searching homes without a warrant or probable cause. Upon further analysis it was determined that the complainants were primarily Spanish speaking and that the subject officer who was not bilingual was claiming verbal consent to search as a defense. The IPA attended the next interview of this officer and requested that the officer repeat in Spanish exactly how he/she was obtaining consent. The officer conceded that he was not able to speak Spanish and that he/she was relying on hand and eye gestures to communicate. This was found to be an unacceptable practice and the Chief of Police quickly took action.



Filing a complaint at the Professional Standards & Conduct Unit.

Other characteristics specific to the IPA are that it was not designed to operate in an adversarial role, nor as an advocate for or against the complainants and/or police officers. It can be counter productive to establish a form of police oversight that is viewed by the recipients of the recommendations as adversarial.

In summary, the IPA's main purpose is to perform an audit of citizen complaints, and insure that they are conducted in an objective and impartial manner.

An analysis of the data extracted from civilian complaints form the basis of the recommendations made by the IPA in the annual public reports. These recommendations include the creation, modification or elimination of policies, procedures or department rules. Since it's inception, over ninety percent (90%) of the recommendations made by the

IPA have been adopted and implemented.

EFFECTIVE POLICE OVERSIGHT

Since the establishment of the IPA, efforts have been made to improve the effectiveness of the office and its duties. As a result, many internal changes have taken place in terms of its operations, processes, and direction. This evolution of the IPA has been influenced by the needs of the city's diverse communities.

Because the needs of each community are peculiar to their cities, there has never been a "one size fits all" model for police oversight. In the last five years, there has been much interest in the IPA model from cities across the country which have resulted in the creation of oversight agencies modeled in part by programs such as the IPA.

When determining the effectiveness of a police oversight program, one must consider the level of independence afforded to the agency from police and political pressures. We cannot ignore the reality that police departments may have significant influence over elected officials, and depending on the political climate, could influence the appointment or removal of the Executive Director and/or members of the reviewing body.

Bearing this in mind, the police auditor in San José, is appointed to four year terms and can not be removed from office without 10 of the 11 city council members voting for his/her removal. In further assessing the effectiveness of a police oversight program, the least reliable measure is the rate by which complaints are sustained. This is because each agency collects and reports statistics differently.

The best measure lies in evaluating their impact on a police department's policies and procedures. It is not enough to make recommendations because all oversight models make recommendations. The litmus test is whether these recommendations are adopted, implemented and their effect tracked, measured and evaluated to insure that the sought after results are being achieved.

For example, three years ago the IPA recommended that certain procedures be followed by command staff following notice of a use of force by an officer. This recommendation later became a new police duty manual section.¹ In 1998, the IPA examined compliance by the command staff in all those cases where serious force was used, by conducting a study of the supervisors actions and comparing

¹ See Appendix C (Independent Police Auditor's Recommendations).

them against the required duties as stated in the duty manual section. This analysis served as the basis for evaluating the effectiveness of the recommendation (refer to Chapter 11 of this report).

morale; they can also destroy the public confidence and credibility the police need to fight crime.

Obtaining the type of information that helps a police department identify problem officers is valuable. This data is the basis for the Early Warning System (EWS) of the San José Police Department. The EWS tracks police officers with complaint histories for the purpose of identifying potential problems and providing guidance. The IPA believes that no one can better prevent and uncover police misconduct than the police themselves, but without outside pressure, departments may revert to their natural tendency to let their self-policing efforts slide. Not only do scandals embarrass a police department and destroy